

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

KIRK R. MOLDER,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 13-59-GF-DWM-JTJ

ORDER

FILED

OCT 19 2015

Clerk, U.S. District Court
District Of Montana
Missoula

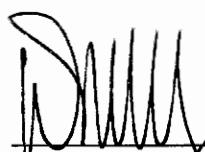
On September 14, 2015, Magistrate Judge John Johnston recommended the State's motion for summary judgment, (Doc. 27), be denied in light of the Ninth Circuit's recent decision in *Rogers v. Ferriter*, 796 F.3d 1009 (9th Cir. 2015) and the State's concession based on that ruling, (Doc. 40). (Doc. 42.) As no objections have been filed, those findings and recommendations are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 623

(1993) (internal quotation marks omitted). Finding no clear error,

IT IS ORDERED that the Findings and Recommendation (Doc. 42) are
ADOPTED IN FULL.

IT IS FURTHER ORDERED that the State's motion for summary judgment
(Doc. 27) is DENIED.

Dated this 19th day of October, 2015.



Donald W. Molloy, District Judge
United States District Court
